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In re Application of: :
ELLSWORTH, Michael, Aaron, et al. : DECISION ON RENEWED
U.S. Application No.: 10/593,134 : PETITION UNDER 37 CFR
Int'l Application No: PCT/IB2005/000610 : 1.137(b) AND REQUEST UNDER
Int'l Filing Date: 04 March 2005 : 37 CFR 1.497(d)
Priority Date: 17 March 2004 :
Atty Docket No.: PC32199A :
For: METHOD OF VACCINATION :
AGAINST TESTICULAR BVDV :
INFECTON :
:

This decision is issued in response to applicants' "Renewed Petition Under 37 CFR 1.137(b)" filed 21 February 2008, treated herein as a renewed petition under 37 CFR 1.137(b) and a request to correct inventorship under 37 CFR 1.497(d).

No additional petition fee is required for the renewed petition under 37 CFR 1.137(b), and applicant has paid the processing fee required for the request under 37 CFR 1.497(d).

BACKGROUND

The procedural background for the present application was set forth in the decision mailed 17 January 2008. The decision dismissed applicants' petition under 37 CFR 1.137(b) for failure to satisfy all the requirements of a grantable petition. Specifically, applicants had not provided the "required reply" in the form of an acceptable declaration under 37 CFR 1.497 (the declaration filed herein sets forth an inventive entity different from the international application, and applicants had not submitted the materials required to correct inventorship under 37 CFR 1.497(d)).

On 21 February 2008, applicants filed the renewed petition under 37 CFR 1.137(b) considered herein. The renewed petition included the materials required under 37 CFR 1.497(d) to correct the inventorship herein.

DISCUSSION

1. Request To Correct Inventorship Under 37 CFR 1.497(d)

As noted in the previous decision, a grantable request to add an inventor under 37 CFR 1.497(d) requires: (A) a statement from the person being added as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (B) the processing fee set forth in 37 CFR 1.17(i); and (C) the written consent of the assignee if an assignment has been executed by any of the original named inventors (see 37 CFR 3.73(b)).

The present submission includes a statement from Maurice Daniel GIVENS (the inventor who is named on the declaration but who is not of record) in which Mr. GIVENS confirms that the failure to list him as an inventor on the international application occurred without deceptive intent. Requirement (A) is therefore satisfied.

The present submission included payment of the required \$130 processing fee. Requirement (B) is therefore satisfied.

Finally, the present submission includes the consent of the assignee to the requested change in inventorship, and this consent is submitted in compliance with 37 CFR 3.73(b). Requirement (C) is therefore satisfied.

Applicants have satisfied all the requirements under 37 CFR 1.497(d) for correction of the inventorship herein. Accordingly, the inventorship for the present application is properly corrected so as to include additional inventor Maurice Daniel GIVENS.

2. Renewed Petition Under 37 CFR 1.137(b)

Based on the correction of inventorship above, the declaration filed 12 December 2007 is no longer defective for failure to properly identify the inventors of record herein. The declaration may therefore be accepted as the "required reply," that is, an oath or declaration acceptable under 37 CFR 1.497.

The final requirement for a grantable petition for revival under 37 CFR 1.137(b) has now been satisfied. The renewed petition for revival is therefore appropriately granted.

CONCLUSION

The request to correct inventorship under 37 CFR 1.497(d) is **GRANTED**.

The renewed petition for revival under 37 CFR 1.137(b) is **GRANTED**.

The inventorship herein is corrected to include third inventor Maurice Daniel GIVENS. Based on this correction, the declaration filed 12 December 2007 is now acceptable under 37 CFR 1.497.

The application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 12 December 2007.

RMR

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